IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1042 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURSANGBHAI NANUBHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR HL JANI ASTT GOVERNMENT PLEADER for Respondent No. 1

MS PJ DAWAWALA for Respondent No. 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 15/06/2001

ORAL JUDGEMENT

#. Heard Mr.Deepak Thakkar, learned advocate appearing behalf of the petitioner and Mr.H.L.Jani, learned AGP on behalf of the respondent Nos.1 to 3 and Ms.P.J.Dawawla, learned Additional Standing Counsel for

the Central Government appearing for the respondent No.4.

#. In the present petition, the petitioner has challenged the detention order dated 8th January, 2001 passed by the District Magistrate, Surendranagar under the provisions of PBM Act and the petitioner has been detained at Sabarmati Jail as Class-II detenu. The grounds of detention has been communicated and supplied to the present petitioner by the respondents. The respondent District Magistrate, Surendranagar has filed affidavit in reply dated 21st March, 2001 and one more affidavit-in-reply has been filed by the Deputy Secretary of the Food, Civil Supply and Consumer Affairs Department on 30th March, 2001 which are taken on record.

#. Learned advocate Mr.Deepak Thakkar has submitted that though various contentions have been raised by the petitioner challenging the detention order but according to him, one contention is enough to vitiate the detention order. According to him, against the detention order, representation dated 5th February, 2001 - Annexure-C page-23 has been made by the advocate of the petitioner to the District magistrate, Surendranagar was not forwarded in time meaning thereby immediately to the State Government and there was delay about more than 8 days and therefore the detention order is vitiated. He also submitted that delay which has been caused by the detaining authority while forwarding the representation to the State Government has not been explained by the detaining authority and therefore this detention order is required to be set aside. Mr.Thakkar, learned advocate has placed on record the letter dated 17th February, 2001 of District Magistrate, Surendranagar District, addressed to the learned advocate, wherein it is mentioned that representation dated 5th February, 2001 has been received by the office of the District Magistrate, Surendranagar District, MAG Branch on 9th February, 2001 and the detaining authority has forwarded the representation to the State Government on 17th February, 2001 and therefore there was delay in forwarding the representation to the State Government and therefore this order of detention is required to be set aside. He also submitted that the respondent No.4 has no filed any reply. Mr.Thakkar, learned advocate has relied upon two decisions of this Court one is in URMILABEN NAVNITLAL GANDHI VS. THE COMMISSIONER OF POLICE SURAT CITY AND OTHER reported in 1994 (2) G.L.H. (U.J.) 10 and the second decision of the learned Single Judge in Special Civil Application No.9664 / 1999 dated 16th march, 2000. He relied upon the observations made in para-6 wherein two days delay in forwarding the representation by the detaining authority

to the State Government is held to be fatal and on that ground the detention order is set aside by this Court.

#. Learned AGP Mr.H.L.Jani, appearing on behalf of the respondent - State has submitted that there was no delay, on the contrary, the detaining authority has immediately forwarded the representation to the State Government. Mr.Jani, learned AGP has relied upon page-93 of the affidavit in reply para-12, wherein the detaining authority has mentioned that representation dated 5th February, 2001 of the detenu was received but no date and time has been mentioned by the District Magistrate, Surendranagar. However, the order of detention was approved by the Government on 19th January, 2001. It is also mentioned in the reply that the said representation has been forwarded to the State Government on 17th February, 2001 taking into consideration the resolution of the Government dated 9th November, 1995. Mr.Jani, learned AGP has also shown original file in respect of the representation which has been received by the office of the District Magistrate. This Court has perused the original file wherein, some of the dates are mentioned, out of which, one date is 9th February, 2001 and another date is 13th February, 2001 so also 14th February, 2001 and 15th February, 2001. After considering these dates, in the said representation in right column, the date of said representation has been received by the office of the District Magistrate, Surendranagar on 14th February, 2001. However, according to the learned AGP Mr.Jani, the said representation has been received by the District Magistrate, Surendranagar on 15th February, 2001. Learned AGP Mr.Jani has also submitted that the said representation has been rejected by the State Government on 20th February, 2001. Therefore, according to the learned AGP Mr.H.L.Jani, the detention order cannot be vitiated on the ground of delay because there was no delay, but on the contrary immediately after receiving the said representation on 15th February, 2001, the District Magistrate, Surendranagar - the detaining authority has forwarded on 17th February, 2001. Therefore, effective steps have been taken by the detaining authority, therefore, the order of detention cannot be vitiated on this ground.

#. Learned Advocate Ms.P.J.Dawawala, appearing on behalf of the respondent No.4 has supported the order of detention and further submitted that looking to the facts as narrated in the grounds of detention, the order of detention is legal and valid which does not warrant any interference by this Court.

#. I have considered the submissions of learned advocates, one fact remains that the representation dated 5th February, 2001 submitted by the advocate of the petitioner to the detaining authority as per the original file, the District Magistrate has received on 14th February, 2001 and according to the letter dated 17th February, 2001 of District Magistrate, Surendranagar in the office of the District Magistrate and the said representation has been received on 9th February, 2001. In light of this fact, whether representation has been received on 9th February, 2001 or 14th February, 2001 or 15th February, 2001 but one fact is clear and undisputed between the parties that the said representation has been forwarded by the detaining authority to the State Government on 17th February, 2001. Therefore, now the question remains to be examined that even one day delay in forwarding the representation which admittedly remained unexplained vitiates the order of detention or not ?

#. I have considered the decisions of this Court in case of URMILABEN NAVNITLAL GANDHI VS. THE COMMISSIONER OF POLICE, SURAT CITY reported in 1994(2) GLH [U.J.] 10, wherein this Court has considered that delay of five days in consideration of the representation not properly explained and it was held that in such circumstances, the detention order has been declared to be invalid. The Division Bench of this Court has also considered the decision of the Apex Court in case of HARISH PAHAVA VS. STATE OF UTTAR PRADESH, AIR 1981 SC 1126, wherein similar delay was held to be unreasonable, vitiating the continued detention of the detenu, the delay of five days on the part of the office of the Commissioner of Police, Surat City in forwarding the representation against the detention of the detenu was thus unreasonable and not properly explained vitiating the continued detention of the detenu.

#. I have considered the decision of this Court in Special Civil Application No.9664 / 1999 decided on 16th March, 2000, relevant observations of the said decision in para-6 are as under :-

"6. Having regard to the rival side contentions, the first factor that catches attention is the delay caused in forwarding the representation by the detaining authority. Admittedly, the representation made on behalf of the detenu was received on 16-11-1999. The detention was approved on 12-11-1999 and, therefore, the detaining authority was only

> expected to forward the representation to the State Government. The representation is forwarded on 18-11-1999. The detaining authority has not explained as at what point of time, the representation was received on 16-11-1999 and how it was dealt with on 17-11-1999 and, therefore, taking a liberal view that the representation may have been received on 16-11-1999 by evening, then also, the time consumed in forwarded till 18-11-1999 remains unexplained, i.e. there is no explanation coming forward as to what was done in respect of the representation on 17-11-1999. For this one day, probably, the representation remained unattended. This inaction and want of attention to the representation can be considered as sufficient to have infringed the right of the detenu of making an effective representation."

#. After considering these two decisions and observations made in para-6 of Special Civil Application No. 9664 / 1999 which is identical in nature and considering the facts of the present case that representation of the detenu dated 5th February, 2001 received by the detaining authority on 9th February, 2001 or 14th February, 2001 or 15th February, 2001 but fact remains that the representation remained with the detaining authority upto 16th February, 2001 and on 17th February, 2001 said representation has been forwarded by the detaining authority to the State Government. Therefore, even one day delay which admittedly remained unexplained and since there is no explanation given by the District Magistrate, Surendranagar in the reply that why no effective steps have been taken on 16th February, 2001 and therefore considering the observations in para-6 of above referred decisions, according to my opinion, inaction and want of attention to the representation can be considered as sufficient to have infringed the right of the detenu of making effective representation.

#. Therefore, in light of above discussions and observations, present petition is allowed. The impugned order of detention dated 8th January, 2001 is hereby quashed and set aside. The detenu - SURSANGBHAI NANUBHAI PARMAR is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

Date : 15-6-2001 [H.K.Rathod, J.]

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